

In the Matter of

Case No. 18-cv-05775 (ERK)(TAM)

STAR AUTO SALES OF BAYSIDE, INC., et al.

v.

VOYNOW, BAYARD, WHYTE AND COMPANY LLP, et al.

Deposition of Vincent Petruzziello

Monday, December 18, 2023



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2 represent someone as an expert, there was no
3 deposition, it was just -- it went to trial.

4 Q. That case where you appeared as an
5 expert and it went to trial, what was the name
6 of that case?

7 A. I don't know the exact name of the
8 case.

9 Q. Do you know any of the parties to
10 that case?

11 A. Yes. Let me think for a second.
12 If I can look here (indicating). It was
13 Brandow Chrysler versus Reed Smith.

14 Q. Mr. PetruzzIELLO, you just got up
15 from your desk, so just so you know, you're on
16 video. So, what did you refer to, to get that
17 name?

18 A. I went to the bookshelf next to my
19 desk, and I do have that report that I prepared
20 in my bookshelf.

21 Q. Okay.

22 MR. MULE: We'll ask for a copy of
23 that report, please.

24 MS. FITZGERALD: Put your request in
25 writing, and then we'll respond.

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2 MR. MULE: Okay.

3 BY MR. MULE:

4 Q. Mr. PetruzzIELLO, can you spell
5 Brandow Chrysler, please?

6 A. Brandon is B-R-A-N-D-O-N, and
7 Chrysler.

8 Q. And it was versus Reed Smith, that
9 was the accounting firm?

10 A. No.

11 Q. Okay.

12 A. They were the company hired by the
13 bank that financed Brandon's inventory, and
14 they checked the cars supporting the floor plan
15 liability.

16 Q. And you were an expert for the
17 dealership?

18 A. No, for the defendant.

19 Q. And what were you asked to give an
20 opinion on?

21 A. I was asked to give an opinion on
22 whether the floor plan checker, Reed Smith,
23 performed their job adequately. And the second
24 part was the defendant -- the plaintiff was
25 claiming that if they would have known that

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they had a large liability for unpaid cars,
they would have paid it off. So, the second
part of my report -- the first part dealt with
the -- with their overstating their inventory
to fraudulently borrow more money.

And the second part dealt with the
fact that even if they would have -- they
supposedly didn't know about this even though
they were doing it, they would not have the
financial ability to pay off the cars anyway.

Q. And that case went to trial?

A. Yes, it did.

Q. And you were qualified as an expert
in that case?

A. Yes, I was.

Q. And did that case result in a
verdict or a judgment?

A. Yes, it did.

Q. And who was the judgment in favor
of?

A. In favor of the defendant, the
company that I was supporting.

Q. What year was what case?

A. I'm going to estimate 2013.

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2 Q. Okay. We're going to get back to
3 that case because I realized I didn't give you
4 instructions, but you're doing very well. As a
5 deposition, since you've had some experience
6 with depositions, I'm going to ask you a number
7 of questions and if you could please wait until
8 I'm done with the question before responding;
9 okay?

10 A. Yes, sir.

11 Q. And as you know, this is taken down
12 by a court reporter, so I'll ask that you
13 please verbalize all your answers. A lot of
14 our communications informally is done by hand
15 gestures or otherwise. So, here, you have to
16 speak your response; okay?

17 A. Understood.

18 Q. And if you do not understand a
19 question, please let me know and I will try to
20 rephrase it so that it is more understandable.
21 If you do not tell me you do not understand the
22 question, I'll assume you understood the
23 question requested; okay?

24 A. Yes, sir.

25 Q. If you need to take any break, just

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is petty, and some of it is -- could be real.
The fact that you have the hotline is what's
important, and the fact that you let your
employees know that it's their responsibility
to come forward with problems.

Q. Mr. PetruzzIELLO, what do you claim
to be your area of expertise?

MS. FITZGERALD: For purposes of
this case?

MR. MULE: Correct.

THE WITNESS: For purposes of this
case, it was to judge management's
responsibility in these frauds, and to
offer an opinion as to whether the frauds
actually took place.

BY MR. MULE:

Q. So, to judge management's
responsibility in this case, that's one, and
the other whether the frauds actually took
place; correct?

A. Yes, to offer an opinion.

Q. And what makes you qualified to
judge management's responsibility in this case?

A. You're very qualified to do that

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Q. Now, earlier this morning, we started to discuss your role as an expert and I said I would get back to it. And in that particular case, it was Brandon or Brandow --

A. Brandow Chrysler.

Q. Brandow Chrysler versus Reed Smith, and you were retained by the expert -- I'm sorry, retained as an expert for the defendant. And the question was whether the floor plan checker performed the job adequately, and the second aspect of that was if they had had known that inventories were overstated -- I'm sorry. You said if they knew about overstated inventory, they would not have financial ability to pay off the cars anyway. Did I state that correctly?

MS. FITZGERALD: Object to form.

THE WITNESS: Their claim was that they didn't know how much they were indebted based on the floor plan audits, and they made the statement that had they have known, they would have paid off the cars. However, reviewing the financial information, they didn't have that

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2 capacity.

3 BY MR. MULE:

4 Q. Did that particular engagement
5 involve the topic of fraud and management's
6 role and responsibility in operating an
7 automobile dealership?

8 A. I believe it did.

9 Q. Is that the case that you're
10 referring to when you state that you've been
11 qualified as an expert and have presented
12 testimony on the topic of fraud, and
13 management's role and responsibility in
14 operating an automobile dealership?

15 A. Yes.

16 Q. Is there any other case where
17 you've been qualified as an expert and have
18 presented testimony on that topic?

19 A. No.

20 Q. So, you've been qualified as an
21 expert in one case; correct?

22 A. You got to start somewhere.

23 Q. And that was how many years ago?

24 A. I believe it was 2013. It went on
25 for a while, but -- if you want me to go to my

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2 credenza, I can look at the report.

3 Q. That's unnecessary for the moment.
4 Have you been consulted by any dealership or
5 anyone else other than this case, about claims
6 concerning management's role and responsibility
7 in operating an automobile dealership?

8 A. No. I've done consulting work for
9 various dealer groups, but it wasn't
10 specifically dealing with fraud.

11 Q. If you could get the -- I guess get
12 that report from the credenza.

13 MS. FITZGERALD: You know what? I'm
14 not going to -- I'm going to object to
15 any -- well, first of all, what's the
16 follow-up on it?

17 MR. MULE: He just referred to it,
18 so I'm going to ask him questions about
19 it.

20 MS. FITZGERALD: I'll just have a
21 standing objection to the line of
22 questions. This is not a document that
23 is referenced or incorporated into the
24 report in this case for which he is being
25 offered as an expert to provide

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2 testimony.

3 MR. MULE: Okay. But we -- but
4 nonetheless, we'll ask questions.

5 BY MR. MULE:

6 Q. Mr. PetruzzIELLO, if you could
7 please get the report (indicating). Okay. If
8 you could -- you started to say that -- what
9 that claim was. If you could refresh your
10 recollection by looking at that report and tell
11 me in a little more detail what the claims were
12 in that case.

13 A. Well, the claim is quite simple.
14 The plaintiff, Brandow, tried to say that the
15 people that were doing the floor plan reviews
16 were not competent and made errors in counting
17 the cars. And that resulted in their
18 out-of-trust situation, not paying for sold
19 cars, grew to the point where they couldn't pay
20 them off.

21 Q. They were saying that the
22 incompetence of the defendant in floor plan
23 review in counting cars linked to what?

24 A. Not to belabor it, but when a car
25 dealership borrows against the cars in

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inventory being new or used, it creates a note for each car. And when they sell the car, they're supposed to pay it off in a timely manner, it depends on the terms of their contract. In this case, it was five days, I believe. And what they're claiming is that the floor plan company didn't let them know the number of outstanding cars they owed for.

Q. Did the dealership sustain a liability or a judgment from a manufacturer as a result of failing to pay for outstanding cars?

A. We had to pay off the bank, PNC Bank. The car comes in, the manufacturer bills the bank, the bank pays them and when the car is sold, the dealer pays the bank.

Q. Did PNC Bank sue Brandow?

A. No, I don't know whether they had to sue to collect their money, or whether they got it without suing.

Q. And Brandow was the plaintiff in this case --

A. Suing the floor plan checker, the company that checked the floor plan for PNC.

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Q. Were there any claims by the dealership of fraud in that case?

A. No.

Q. Were there any claims in that case of manipulation of the dealership books and records?

MS. FITZGERALD: Object to form.

THE WITNESS: What I found out was that the dealerships, the owners were manipulating their books and records -- prove that.

BY MR. MULE:

Q. So, was it -- what in particular did you testify to that the dealership was manipulating its books and records regarding?

A. The dealership group had four or five dealerships in Pennsylvania, and they were financing their -- and a large rental company, and they were financing their inventories through PNC Bank. Reed Smith was the checker for PNC Bank.

They also had a dealership in New Jersey, a Chevrolet dealership, that they were financing their inventory through General

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Motors' acceptance. What the dealership was doing was taking used cars that they owned in the Chevy dealership, and financing them through PNC, and taking cars that they owned in the Pennsylvania dealerships that were financed with PNC, and double-dipping them from GMAC.

So, they would -- when the floor plan checkers came, when they borrowed they would produce the titles to borrow against the same car at two different dealerships. And that's how they got so much in debt because they were double financing the same cars. So, I would call that fraud.

Q. So, there, the dealership itself was basically borrowing against the same cars twice?

A. The short version is yes.

Q. And that did not involve particular employees of the dealership taking funds from the dealership itself; correct?

A. There was also some static in the case, which I didn't pay too much attention to, where they accused their controller of doing this particular fraud.

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2 Q. What types of claims did Brandow
3 bring? Do you know?

4 A. Their claim was that they didn't
5 realize how much money they owed. And that
6 they were -- that they weren't able to pay it
7 because they didn't know it until it was too
8 late.

9 Q. The report that you retrieved from
10 your credenza, does it identify the case name?

11 A. Brandow Chrysler Jeep Company, Et
12 Al, versus Reed Smith.

13 Q. Does it identify the court where
14 the matter was pending?

15 A. No.

16 Q. Do you reference an appendix in
17 that report that identifies the case name?

18 A. I don't know. It's been a long
19 time.

20 Q. Sure. Could you take a look,
21 please?

22 A. Yeah.

23 Q. Were you retained by counsel in
24 that case?

25 A. Yes; Marshall Dennehey.

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2 Q. And am I correct that there's been
3 no other case that you have been engaged as an
4 expert?

5 A. That's true.

6 Q. The other cases where you had your
7 deposition taken, had they have all been on
8 behalf of Dodge City or the other companies
9 where you've been employed?

10 A. Yes, as a representative of the
11 companies.

12 Q. And in all those cases, was the
13 dealership or the dealership group, whatever
14 the case may be, a defendant?

15 A. Yes. Now, we've had situations
16 where we sued other people, but I don't
17 remember any depositions on those cases.

18 Q. And you testified at trial in the
19 Brandow case; correct?

20 A. Correct.

21 Q. Have you ever testified at trial in
22 any other case?

23 A. Yes.

24 Q. What other case?

25 A. Small dollar cases where people

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A. No, I'm saying it's a different function. And I'm not going to opine on what a CPA would do in my role.

Q. You don't know what a CPA would do you in your role?

A. No, I don't.

Q. And you could make no comment as to whether hiring a CPA to perform certain roles that you performed would be reasonable or not; is that correct?

A. I'm not going to comment on that.

Q. Your opinion in your September 15, 2023 report consists of two core conclusions. If we look on pages 1 and 2 (indicating). Your first conclusion is that Star Auto Group failed to follow certain basic business practices that would have discouraged or detected the alleged theft shortly thereafter, and these failures by management were a substantial contributing factor in the alleged fraudulent issues," and then you go on -- following ways --

MS. FITZGERALD: Losses.

BY MR. MULE:

Q. Losses, I'm sorry. In the